

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: July 19, 2006 Key West

Division: BOCC

Bulk Item: Yes ☐ No ☒

Department: DISTRICT FIVE

Staff Contact Person: DonnaHanson

AGENDA ITEM WORDING: Discussion and clarification of the ILA with the FKAA. Specifically in regards to creation of County-FKAA Wastewater Committee's (CFWC) duties, recommendations and planning documentation for the Lower Keys Wastewater planning area. Discussion Monroe County Wastewater Projects plans development and evaluation process within a BOCC workshop.

ITEM BACKGROUND:

BOCC 9-21-2005 / 9-28-2005 K-3 agenda item

This ILA created a County-FKAA Wastewater Committee (CFWC) that was supposed to meet once a month to;

- a. Develop an implementation schedule, consistent with State and Federal law, and in conformity with the Monroe County Sanitary Wastewater Plan, for the construction of wastewater systems in unincorporated Monroe County.
- b. Develop a financial plan to fund, in a fair and equitable manner, wastewater systems for unincorporated Monroe County.
- c. Develop requests for proposals (RFP) for the procurement of wastewater systems in unincorporated Monroe County, consistent with the procurement policies of the County.
- d. Review, rank and recommend to the Monroe County Board of Commissioners and the FKAA Board of Directors the overall highest ranked firm pursuant to the RFP.
- e. Conduct negotiation, if appropriate under the terms of the RFP, with the firm selected by the County and the FKAA to reach a fair and affordable cost for a wastewater system.
- f. Provide ongoing coordination between the County and FKAA in the construction, operation, and maintenance of wastewater projects.
- g. Provide such other assistance as requested by the County and the FKAA.

PREVIOUS RELEVANT BOCC ACTION:

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

TOTAL COST: _____

BUDGETED: Yes ☐ No ☐

COST TO COUNTY: _____

SOURCE OF FUNDS: _____

REVENUE PRODUCING: Yes ☐ No ☐ **AMOUNT PER MONTH** _____ **Year** _____

APPROVED BY: County Atty ☐ OMB/Purchasing ☐ Risk Management ☐

DIVISION DIRECTOR APPROVAL: _____


COMMISSIONER GLENN PATTON

DOCUMENTATION: Included ☒ Not Required ☐

DISPOSITION: _____ **AGENDA ITEM #** _____

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: September 21, 2005 *Sept 28, 2005* Division: BOCC

Bulk Item: Yes No X Department: BOCC

Staff Contact Person: Mayor Dixie Spehar

K-3

AGENDA ITEM WORDING:

Approval of a resolution setting forth principles which are critical to the completion of wastewater projects in the unincorporated County.

ITEM BACKGROUND:

The County and FKAA entered into an ILA for the provision of wastewater services. Certain principles should be recognized to guide the progression of the projects anticipated under that agreement.

PREVIOUS RELEVANT BOCC ACTION:

Approval of an "umbrella" ILA with the FKAA on September 6, 2005.

CONTRACT/AGREEMENT CHANGES:

STAFF RECOMMENDATIONS:

Approval.

TOTAL COST: NA

BUDGETED: Yes NA No

COST TO COUNTY: NA

SOURCE OF FUNDS:

REVENUE PRODUCING: Yes No AMOUNT PER MONTH Year

APPROVED BY: County Atty X OMB/Purchasing Risk Management

DIVISION DIRECTOR APPROVAL:

Mayor Dixie Spehar

(TYPE NAME HERE)

DOCUMENTATION: Included X Not Required

DISPOSITION:

AGENDA ITEM # *K-3*

INTERLOCAL AGREEMENT FKAA

THIS INTERLOCAL AGREEMENT is entered into pursuant to Sec. 163.01, FS., by and between Monroe County, a political subdivision of the State of Florida, (County), and the Florida Keys Aqueduct Authority, Inc., an independent special district, (FKAA).

WHEREAS, the County is authorized by Sec. 125.01(1), FS, to provide, assist in providing and fund centralized wastewater treatment systems;

WHEREAS, Chap. 99-395, Sec. 6, Laws of Florida, and the County's Comprehensive Plan require that certain wastewater treatment levels be achieved by 2010, levels which can best be achieved by central wastewater treatment systems;

WHEREAS, the FKAA is authorized by Chap. 76-441, Laws of Florida, as amended, to design, construct, and operate, wastewater treatment systems;

WHEREAS, the FKAA and the County have entered into previous interlocal agreements establishing and confirming their ongoing relationship in providing wastewater facilities in the Florida Keys; and

WHEREAS, the County, by adopted resolutions, have provided funding to the FKAA for wastewater projects and may provide additional funds to the FKAA for the administration, planning and construction of future wastewater projects in unincorporated Monroe County; and

WHEREAS, the County and the FKAA desire to put in place procedures to define the respective roles of the County and the FKAA in the planning, construction and operation of future wastewater projects in unincorporated Monroe County; and

WHEREAS, by forming a working relationship through an interlocal agreement, the County and the FKAA, can effectively and efficiently pool their resources and expertise in wastewater systems, thereby better serving the citizens of Monroe County;

IN CONSIDERATION of the mutual consideration and premises set forth below, the parties agree as follows:

- I. There is hereby created a County-FKAA Wastewater Committee (CFWC) which shall be comprised of the following members or designee:

| | |
|----------------------------|--------------------------|
| County Committee Appointee | FKAA Committee Appointee |
| County Engineer | FKAA Wastewater Engineer |
| County Financial designee | FKAA Financial designee |
| Monroe County Commissioner | *FKAA Board Member* |

* non-voting advisory member

It shall be the policy of the CFWC to invite members of the public to meetings wherein project-specific issues will be discussed. The CFWC shall promote the attendance of

community leaders that reside in areas where future wastewater projects are being planned.

2. The duties of the CFWC shall be to :
 - a. Develop an implementation schedule, consistent with State and Federal law, and in conformity with the Monroe County Sanitary Wastewater Plan, for the construction of wastewater systems in unincorporated Monroe County.
 - b. Develop a financial plan to fund, in a fair and equitable manner, wastewater systems for unincorporated Monroe County.
 - c. Develop requests for proposals (RFP) for the procurement of wastewater systems in unincorporated Monroe County, consistent with the procurement policies of the County.
 - d. Review, rank and recommend to the Monroe County Board of Commissioners and the FKAA Board of Directors the overall highest ranked firm pursuant to the RFP.
 - e. Conduct negotiation, if appropriate under the terms of the RFP, with the firm selected by the County and the FKAA to reach a fair and affordable cost for a wastewater system.
 - f. Provide ongoing coordination between the County and FKAA in the construction, operation, and maintenance of wastewater projects.
 - g. Provide such other assistance as requested by the County and the FKAA.
3. The CFWC committee shall meet at least monthly. The County and the FKAA shall provide clerical and legal staff to support the operations of the CFWC, including insuring compliance with Florida's Open Government Law.
4. The County and the FKAA agree that no Request For Proposals (RFPs) will be published for wastewater projects in unincorporated Monroe County without the recommendation of the CFWC and joint approval of the Monroe County Commission and the FKAA Board of Directors.
5. The County and the FKAA agree that no contracts pursuant to the procurement of any new wastewater system in unincorporated Monroe County will be signed without the recommendation of the CFWC and joint approval of the Monroe County Commission and the FKAA Board of Directors.
6. The County and the FKAA agree to work together to establish fair and equitable user fees to fund the operation and maintenance of wastewater systems.
7. The County and the FKAA agree that many issues will need to be resolved to achieve wastewater treatment within unincorporated Monroe County and agree to let the CFWC work to bring consensus to those issues and make recommendations to both the Monroe County Commission as well as the FKAA Board of Directors. The County and the FKAA agree to work together to seek and obtain Federal and State grants to assist in the funding of wastewater projects.
8. The County and the FKAA agree that ownership of wastewater infrastructure is an issue that will need further resolution. Both parties acknowledge that many factors may affect ownership including the requirements of certain financing vehicles. The CFWC will weigh ownership alternatives and make recommendations to the Monroe County Commission and the FKAA Board of Directors as to the sole or joint ownership of future wastewater projects.

9. The parties agree that this written document represents their initial mutual agreement and replaces any prior agreement, understandings, or communications on the subject matter of the agreement, whether written or oral. The parties agree that this ILA may be amended with the consent of both parties upon recommendations of the CFWC and approval of both the Monroe County Commission as well as the FKAA Board of Directors.
10. This agreement will take effect on the date a copy executed by both parties is filed with the Clerk of the Courts of Monroe County, Florida.
11. This agreement may be severed by formal action by one or both parties with 90 days notification to the other party of such planned action. Formal action shall be defined as a majority vote by one or both of the respective boards to sever the agreement. The responsibility for any joint projects that should exist at the time of severance shall be negotiated among the parties and found to be mutually acceptable to both the BOCC and FKAA.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

**BOARD OF COUNTY
COMMISSIONERS OF MONROE
COUNTY, FLORIDA**

(SEAL)

By: _____
Mayor / Chairperson

Danny L. Kolhage, Clerk

By: _____
Deputy Clerk

**THE FLORIDA KEYS AQUEDUCT
AUTHORITY**

(SEAL)

By: _____
Chairman

ATTEST:

RESOLUTION NO. 362 -2005

**A RESOLUTION OF THE MAYOR AND COUNTY COMMISSION
OF MONROE COUNTY SETTING FORTH PRINCIPLES
CRITICAL TO THE COMPLETION OF WASTEWATER
PROJECTS IN THE UNINCORPORATED COUNTY.**

WHEREAS, Monroe County is diverting a significant portion of its resources to the necessary task of sewerage the Florida Keys; and

WHEREAS, the financial strain on the County from the County's investments in sewerage the Florida Keys will be felt for decades by the citizens of the Florida Keys; and

WHEREAS, the County and State will be bearing a significant portion of the financial obligation; and

WHEREAS, the Florida State Auditor General is the proper entity to monitor and audit the competency and management of this significant undertaking; and

WHEREAS, it is vitally necessary that the sewerage of the Florida Keys be given the highest priority by all concerned and that every state funding source available be utilized to the fullest extent possible; and

WHEREAS, the mandate imposed by the State of Florida to sewer the Florida Keys will fall short of its goal if certain principles are not agreed upon between the county, state, FCAA, and other wastewater service providers in the Florida Keys and uncompromisingly adhered to;

NOW THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Monroe County, that:

1. The following principles are critical to the sewerage of the unincorporated areas of Monroe County, Florida, on a timely and cost-efficient basis:
 - A. The State of Florida should fully understand the financial burden it has added to the citizenry of this Area of Critical State Concern, and that many county improvements will be indefinitely deferred to meet the State mandate.
 - B. The County will make every effort feasible to comply with the State mandate and makes this commitment with the knowledge of the absolute importance of sewerage the Keys.
 - C. The County and the FCAA will utilize all sewer money and revenues collected from customers of wastewater systems, over and above the costs of maintenance, operations, billing, and any direct costs specifically incurred to provide these services, solely to finance the construction of ongoing and projected collection, treatment and disposal systems, and for no other purposes.

D. The State, County, FCAA and Key Largo Wastewater Treatment District will stay fully engaged to ensure both that the most imaginative and cost effective solutions are employed to achieve the mandate with ever limiting funds and that the parties coordinate their efforts to obtain the maximum financial assistance possible from State funded sources.

2. This Resolution shall become effective upon the date of its adoption.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida, at a meeting of said Board held on the 28th day of September, 2005.

| | |
|----------------------|------------|
| Mayor Spehar | <u>Yes</u> |
| Mayor Pro Tem McCoy | <u>Yes</u> |
| Commissioner Neugent | <u>Yes</u> |
| Commissioner Rice | <u>Yes</u> |
| Commissioner Nelson | <u>Yes</u> |

(Seal)
Attest: DANNY L. KOLHAGE, Clerk
By: Sahel C. DeXantis
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: Mayor M. Spehar
Mayor/Chairman

05 OCT 15 PM 12:50

DANNY L. KOLHAGE
CLERK, CIR. CL.
MONROE COUNTY, FLA

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM.
Suzanne A. Hutton
SUZANNE A. HUTTON
ASSISTANT COUNTY ATTORNEY
Date: 9/16/05



BOARD OF COUNTY COMMISSIONERS

Mayor Charles "Sonny" McCoy, District 3
Mayor Pro Tem Murray E. Nelson, District 5
Dixie M. Spehar, District 1
George Neugent, District 2
David P. Rice, District 4

Monroe County
Board of County Commissioners
Office of the County Administrator
The Historic Gato Cigar Factory
1100 Simonton Street, Suite 205
Key West, FL 33040
(305) 292-4441 - Phone
(305) 292-4544 - Fax

January 10, 2006

Jim Reynolds, Executive Director
Florida Keys Aqueduct Authority
1100 Kennedy Drive
Key West, FL 33040

Dear Jim,

Thank you for your response to my November 7 correspondence requesting that the Aqueduct Authority appoint members to the Wastewater Evaluation Committee. I agree that the language in the ILA, (Section 2(d)), requires the formation of the committee to review Requests for Proposals.

In reviewing the ILA, it is clear that the committee could be utilized to perform other functions to support the joint participation of both the Aqueduct as well as the County during the process. Section 2 states that [staff] conduct negotiations, provide coordination and develop RFP's as well as a financial plan for the implementation of wastewater systems within the county. Since the proposed members of the County's evaluation committee consist mainly of staff directly involved in wastewater, I was optimistic that you would reconsider your decision not to name the committee members at this time. I believe that the committee brings added value to the project and would greatly assist with the planning of, and communication between both respective boards.

During my review of the ILA, I noticed that Section 6 requires the joint approval of both boards for the procurement of any new wastewater system in unincorporated Monroe County. We may need to add an item to an upcoming BOCC agenda for the Board to ratify the letting by FKAA of the design phase of the Big Coppitt project to Boyle Engineering to meet the requirements of the ILA.

At the December meeting of the Board of County Commissioners, Mayor Charles McCoy was appointed to serve in the capacity of wastewater liaison. Being an architect for many years, Mayor McCoy has extensive experience in wastewater systems and the intricacies in providing this service within Monroe County and has worked throughout the United States and the Caribbean. It is imperative that Mayor McCoy be a part of the team that plans and executes this program for the County.

I am in receipt of the FKAA proposed capital program for wastewater projects and will be meeting with County staff to promulgate a coordinated financial plan anticipating a year 2010 completion date. At our meeting next week, I would like to discuss the importance of the concurrent planning of future projects to ensure we meet the projected completion of 2010.

Thanking you for consideration of these issues. I look forward to our meeting next week.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Willi', with a stylized flourish at the end.

Thomas J. Willi
County Administrator
The Historic Gato Cigar Factory
1100 Simonton Street, Suite 2-205
Key West, Florida 33040
Office 305-292-4441
Fax 305-292-4544
willi-tom@monroecounty-fl.gov



BOARD OF COUNTY COMMISSIONERS

Mayor Dixie M. Spehar, District 1
Mayor Pro Tem Charles "Sonny" McCoy, District 3
George Neugent, District 2
David P. Rice, District 4
Murray E. Nelson, District 5

Monroe County
Board of County Commissioners
Office of the County Administrator
The Historic Gato Cigar Factory
1100 Simonton Street, Suite 205
Key West, FL 33040
(305) 292-4441 - Phone
(305) 292-4544 - Fax

November 2, 2005

Mr. James Reynolds, Executive Director
Florida Keys Aqueduct Authority
1100 Kennedy Drive
Key West, Florida 33040

Dear Jim:

As stated in the Local Agreement between the Florida Keys Aqueduct Authority and Monroe County, the County Administrator and the Executive Director of the FKAA shall each appoint two members to a Wastewater Evaluation Committee. Attached for your review is information on Monroe County's Wastewater Evaluation Committee members. The three Monroe County members are Commissioner Charles "Sonny" McCoy, Thomas Willi, County Administrator and Elizabeth Wood, Sr. Administrator, Sewer Projects.

Please forward your Wastewater Evaluation Committee members information to me at your earliest possible convenience.

Very truly yours,

Thomas J. Willi
County Administrator

Att.

Charles "Sonny" McCoy
Mayor Pro-tem
BOCC, District 3

Commissioner Charles "Sonny" McCoy was born and raised in the Florida Keys. A third generation conch, he has an Architectural Degree from the University of Florida and a Masters in Business.

He is a registered architect in Florida, North Carolina, Arizona and National Registry and has won both national and international awards for architecture, including work in the Caribbean. In the Florida Keys, he designed the B'Nai Zion Synagogue, the Ocean Key Hotel, the Galleon Resort and Marina, the Key West Post Office, the Stanley Switlik Elementary School, The Park and Ride, the Flagler Historium, and the 950 unit housing complex on the eastern end of Key West. These and many others required wastewater systems and some required treatment plants.

Commissioner McCoy previously served as Mayor of Key West for five consecutive terms. During his tenure he brought Key West out of near bankruptcy and won a national award for the transformation of his community. He also began rebuilding the sewer system of Key West. He was adept at finding grant money for the island and the list of projects he accomplished is long and visible. Commissioner McCoy is also the first to have served as the Mayor of both Key West and Monroe County.

Additional Licenses and Certifications held

Wastewater Treatment Plant Operator, State of Florida

Special Inspector of Threshold Buildings

Structural Masonry Inspector

Thomas J. Willi
County Administrator

Certified General Contractor - licensed 1987
Certified Building Official
Certified Building Inspector

Constructed, permitted and inspected various utility systems, as well as municipal projects.
Developed residential, commercial and industrial projects

Negotiated and constructed service area expansion of public water/wastewater utility
initiated special assessments for water/wastewater projects
Negotiated the purchase of a privately held water/wastewater utility

Negotiated the purchase of a municipal water/wastewater utility
Initiated the governmental taking of a portion of a municipal utility
Routinely accepted subdivision water/wastewater systems upon completion by developer

Elizabeth Wood
40 Seville Circle
Davie, FL 33324
305.710.4675

PROFESSIONAL EXPERIENCE

EE&G Environmental Services - Miami, FL *Staff Engineer, 11/03 - Present*
Coordinated construction and environmental services including:

- Custom design of water treatment systems.
- Design, permitting, and installation oversight of stormwater systems.
- Subsurface/hydrogeologic investigations for foundation design.
- Foundation earthwork and concrete testing.
- Emergency response clean-up and reporting.
- Phase I/Phase II Environmental Site Assessments.
- Air permitting and chemical use regulatory reporting.

RGF Environmental Systems - Riviera Beach, FL *Lab Manager, 03/03 – 07/03*

- Bench top treatment testing for industrial wastewater applications.
- Maintenance/calibration of laboratory equipment and supplies.

Integreytd Consultants – Melbourne, FL *Network Partner, 10/01 - 12/02*

- Spill Prevention Control and Countermeasure Plan preparation.
- Collection of air samples for worker exposure at manufacturing facilities.

Eastern Research Group - Chantilly, Va *Chemical Engineer, 7/99 – 10/01*

- Premanufacturing Notice Initial Review Engineering Reports .
- Pulp and paper mill wastewater sample collection.
- Query development for RCRA risk ranking database.

EDUCATION

B.S. in Chemical Engineering with honors from Florida Tech University

Senior Project: Design of 3 MGD Sequencing Batch Reactor for Domestic WW Treatment

Harris Corporation: Melbourne, FL
Co-operative Education Student

- Preparation of environmental metrics for publication in the annual report.
- Calculation of hazardous air pollutant emissions for permit renewal.

Washington Internships for Students of Engineering
1997 Intern for the American Institute of Chemical Engineers

- Presentation of public policy paper titled, "Project XL: Balancing Regulatory Flexibility with Environmental Performance" at the AIChE annual conference.

Feb 02 06 11:04a

Thomas J Willi Co Admin 305-292-4544

p. 1



Florida Keys Aqueduct Authority

Post Office Box 1239
1100 Kennedy Drive
Key West, Florida 33041-1239
Telephone (305) 298-2424
www.fkaa.com

CC: BOCC

Done K.

Mary L. Rice
Chairman
Marathon

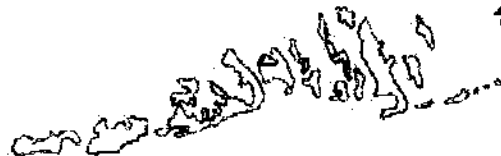
J. Robert Dean
Vice-Chairman
Key West

Elena Z. Herrera
Secretary/Treasurer
Rockland Key

Rose M. Dell
Big Pine Key

David G. Piaz
Key Largo

James C. Reynolds
Executive Director

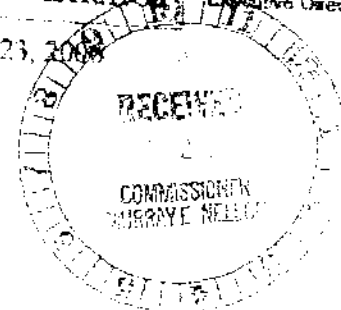


RECEIVED

JAN 26 2006

COUNTY ADMINISTRATOR

January 23, 2006



Mr. Tom Willi
Monroe County Administrator
1100 Simonton Street
Key West, FL 33040

Re: Wastewater Evaluation Committee

Dear Tom:

I am in receipt of your letter dated January 10, 2006 concerning the formal establishment of a Wastewater Evaluation Committee. The FKAA Board of Directors does not feel it is prudent at this time to formulate such a committee. The committee as described in the ILA would have a specific function to review and rank design/build RFP's and make recommendations to the BOCC and FKAA. This review would occur as part of the procurement process and would be subject to the requirements of F.S. 286.011. Since procurement of the Big Coppitt project will be design/bid/build to the lowest bidder, and not a design/build RFP, there is no official purpose for an RFP Review committee. I believe our regular meetings with staff, as described in Section 4.01 of the ILA, have been a productive and effective way to move wastewater projects forward.

Apparently there is some confusion regarding which Inter-local Agreement is in effect at this time. Reference is made in your letter to Section 2 regarding an RFP Committee and Section 6 regarding BOCC approval of awarding contracts. Both of these Sections are contained in an Inter-Local Agreement dated 8/17/05 by the County Clerk. The Inter-local Agreement that is in effect and supersedes previous agreements has an effective date of 9/6/05 and is the ILA that led to the Lease Agreement.

I appreciate your consideration of our concerns and am looking forward to our continued coordination in the development of successful wastewater projects.

Sincerely,

FLORIDA KEYS AQUEDUCT AUTHORITY

James C. Reynolds, PE
Executive Director

Cc: FKAA Board of Directors

FAXED

**INTERLOCAL AGREEMENT
MONROE COUNTY AND FLORIDA KEYS AQUEDUCT AUTHORITY
WASTEWATER SYSTEMS**

THIS INTERLOCAL AGREEMENT is entered into pursuant to Sec. 163.01, F.S., by and between Monroe County, a political subdivision of the State of Florida, (County), and the Florida Keys Aqueduct Authority, Inc., an independent special district, (FKAA).

WHEREAS, the Florida Legislature has identified the Florida Keys as an area of critical state concern, and has authorized actions by the County and FKAA to provide adequate wastewater treatment to protect the environment and the health, safety and welfare of landowners and persons inhabiting the Florida Keys; and

WHEREAS, the County is authorized by Sec. 125.01(1), FS, to provide, assist in providing and fund centralized wastewater treatment systems;

WHEREAS, Chap. 99-395, Sec. 6, Laws of Florida, and the County's Comprehensive Plan require that certain wastewater treatment levels be achieved by 2010, levels which can best be achieved by central wastewater treatment systems;

WHEREAS, the FKAA is authorized by Chap. 76-441, Laws of Florida, as amended, to design, construct, and operate, wastewater treatment systems;

WHEREAS, the FKAA and the County have entered into previous interlocal agreements establishing and confirming their ongoing relationship in providing wastewater facilities in the Florida Keys; and

WHEREAS, the County, by adopted resolutions, has provided funding to the FKAA for wastewater projects and shall provide additional funds to the FKAA for the administration, planning and construction of future wastewater projects in unincorporated Monroe County; and

WHEREAS, the County has deeded to the FKAA parcels of land on Conch Key, the Saddlebunch Keys and Grassy Key; and

WHEREAS, the County has demonstrated its commitment to sewerage the Keys by transferring, at no cost, to FKAA the Grassy Key parcel, for which ad valorem taxes were expended at fair market value and the parcel is to be used by FKAA to serve the City of Marathon, and has committed a maximum of \$20,000,000 to the Key Largo Wastewater Treatment District; and

WHEREAS, the Baypoint (Saddlebunch Keys) and Conch Key projects, constructed by FKAA, are soon to be operational; and

WHEREAS, the County and the FKAA intend to continue their cooperation with Governor Bush, the State Cabinet, the Department of Environmental Protection and the Department of Community Affairs to implement wastewater systems in unincorporated Monroe County by 2010; and

WHEREAS, the parties desire to further define their commitment to work together and to answer concerns raised by the State Cabinet, at a meeting of August 23, 2005, concerning an agreement dated August 17, 2005, between the parties; and

WHEREAS, the parties have been in reliance upon expressions of commitment by the Florida Department of Community Affairs of \$10,000,000 for wastewater projects for fiscal year 2005, and \$20,000,000 for fiscal year 2006, as identified in the Growth Management Plan attached to County Resolution No.039-2004, and the ability to obtain additional critical financial assistance from the State of Florida, the federal government and their agencies to achieve the purpose of this agreement; now therefore,

IN CONSIDERATION of the mutual consideration and premises set forth below, the parties agree as follows:

1. STATEMENT OF INTENT:

This agreement shall set forth commitments of the parties to work together to achieve the 2010 mandate to sewer the Florida Keys. The parties shall work together to obtain funding for wastewater treatment facilities from state and federal sources. The parties shall cooperate with each other and act in a timely manner to acquire, design, construct, and operate wastewater treatment systems throughout the unincorporated areas of Monroe County, except for the area covered by the Key Largo Wastewater District, which has its separate authority and responsibility for sewerage that area. The parties further intend that the sewerage of the Florida Keys shall be done at a reasonable cost to users.

2. RESPONSIBILITIES OF COUNTY:

2.01 The County shall own the land and infrastructure of the wastewater treatment systems acquired or constructed under this agreement, and any amendments hereto, and shall lease said assets to the FKAA as described in Section 3.08 below.

2.02 The County, in addition to funds obtained from state and federal sources, shall provide up to the limits of its bonding capacity of the infrastructure sales surtax and County's ability to levy special assessments, the funds necessary to complete all wastewater projects so that citizens do not have to pay in excess of \$4,500 per EDU in non-ad valorem special assessments. The County shall provide \$20,000,000 for the costs of acquisition, procurement, design, and construction of wastewater projects in the Lower Keys. County commits to full faith and diligence in working with the FKAA to provide funding to make costs of system development and connections for the Big Coppitt and all future projects reasonable to users. County shall have the responsibility of levying the special assessments for wastewater projects. Lower Keys projects included under this Agreement are Big Coppitt area, Cudjoe-Sugarloaf area, and Big Pine area. Other unincorporated County projects are Duck Key and Long Key.

2.03 The County Administrator shall review all procurement documents drafted by, or on behalf of, FKAA for wastewater treatment systems in the unincorporated county. The County Administrator shall make suggestions for changes as he deems in the best interest of the general public.

2.04 The County Administrator shall appoint two members of the evaluation committee should any committee be established.

2.05 The County shall convey to FKAA such easements as are necessary for the installation of sewer lines.

3. RESPONSIBILITIES OF FKAA:

3.01 The FKAA shall administer the procurement processes for the design and construction of wastewater systems in unincorporated Monroe County.

3.02 The FKAA shall develop requests for proposals (RFP) and requests for qualifications (RFQ) for the procurement of wastewater systems in unincorporated Monroe County, consistent with the procurement policies of the FKAA and applicable State statute(s). FKAA shall submit the drafts of RFP/RFQ to the County Administrator for review and input, give due consideration to any suggestions for changes, and shall advertise RFP/RFQs.

3.03 The FKAA shall accept the RFP/RFQ submissions. It is intended that contracts be awarded to the most responsive submitter, which shall not be required to be the lowest responsive bid, the most qualified responder, or other. The parties recognize that the lowest bid may not be the most effective bid. Accordingly, an evaluation committee which will comply with Sec. 286.011, F.S., may be established on an ad hoc basis for each procurement process. Should an evaluation committee be established, the Executive Director of the FKAA and the County Administrator shall each appoint two members.

3.04 The FKAA shall give due consideration to recommendations of the committee, if any, and the County Administrator. The FKAA shall award the contract.

3.05 The FKAA shall provide construction management of each project to insure its expeditious and economic completion. The FKAA authorizes the County Engineer and/or his designee to make site visits to any project under construction, and shall give due consideration to any suggestions of the County Engineer regarding an ongoing project.

3.06 The FKAA shall retain the financing authority provided in its enabling legislation.

3.07 The FKAA shall aid the County in its efforts to obtain funding by providing copies of such documents as the County needs to support its issuance of bonds or to seek Federal and State grants to assist in the funding of all said wastewater projects.

3.08 The FKAA shall lease from the County the land and infrastructure of the wastewater treatment systems acquired or constructed under this agreement and any amendments hereto. The Lease shall be irrevocable and provide absolute and unconditional authority to the FKAA to establish system development fees, rates, budgets, and rules governing operations in such manner as to be consistent with Section 4.06 of this agreement. The lease term shall be ninety-nine (99) years, ~~and renewable for an additional ninety-nine (99) years~~. The FKAA shall be responsible for the maintenance and operations of the systems leased from the County. The

parties understand and agree that the lease to be entered by the parties shall contain covenants, warranties, auditing and monitoring provisions consistent with the provisions found in the Interlocal Agreement between the County and the Key Largo Wastewater Treatment District.

3.09 The FKAA, pursuant to requirements of their enabling act, shall ensure that at least two public hearings be held in the area affected before any system development fee, rate or any other user fee is established or increased. All revenues derived from the wastewater systems by the FKAA over and above maintenance, operations, customer service, billing, and any direct costs specifically incurred to provide these services shall be used solely for the purposes of the wastewater systems, such as the payment of debt service and retirement of bonds.

3.10 This Agreement shall not apply to wastewater assets currently owned by FKAA or hereafter acquired from any other utility.

4. COOPERATION IN CARRYING OUT AGREEMENT:

4.01 The County Administrator and the FKAA Executive Director shall meet as necessary to complete the tasks set forth in this agreement. The County Administrator and the FKAA Executive Director and their staffs shall only serve in their customary capacity of fact-finding, professional advice to, and other efforts to carry out the policies of, their respective boards.

4.02 All communications and dissemination of information regarding wastewater projects shall be through the Offices of the County Administrator and the FKAA Executive Director.

4.03 The parties recognize an obligation of \$80,000,000 of bond-financing to be secured by special assessments in the unincorporated county.

4.04 The parties agree to enter into a lease consistent with this agreement in the most expeditious manner as possible.

4.05 The parties shall work together to secure sites for wastewater treatment plants in remaining lower keys no later than July 12, 2007. Attached hereto is Exhibit A setting forth a preliminary timetable for the projects.

4.06 Neither party shall take any action or omit to take necessary action, including action pertaining to rate setting, that will adversely affect the tax-exempt status of County and FKAA bonds, or the respective party's ability to issue bonds under this agreement. Each party will take such action as is reasonably requested by the other party in connection with the issuance of bonds so as to allow the other party to issue such bonds on a tax-exempt basis, including, but not limited to, executing tax certificates.

5. ESTABLISHMENT OF CERTAIN PREREQUISITES FOR EACH PROJECT

5.01 The County and the FKAA shall work together to achieve the following goal: to establish fair and equitable connection fees and user fees to fund the operation and maintenance of wastewater systems.

5.02 Projects constructed under this agreement shall conform to the Monroe County Sanitary Wastewater Master Plan.

5.03 It is recognized that some outlying areas of the Keys which are not heavily populated may not be feasibly served by a centralized wastewater and sewage system, and that Alternative Wastewater Facilities may be required to be installed to meet the mandate for adequate wastewater treatment in the Florida Keys. All Alternative Wastewater Facilities that may hereafter be constructed and operated within the Service Area of the FKAA shall conform to good utility practices, adequate service to the public, ensure adequate Wastewater Service for the Florida Keys and its citizens. FKAA shall comply with all applicable laws and rules in issuing prior approval for the use, construction, installation, or operation of new or expanded Alternative Wastewater Facilities. The FKAA shall require and enforce the use of its own Wastewater Facilities and facilities leased from County whenever and wherever they are accessible. Any Alternative Wastewater Facility must provide adequate and sufficient service to the projected territory or development.

6. INSURANCE AND HOLD HARMLESS:

6.01 The parties to this agreement stipulate that each is a state governmental agency as defined by Florida Statutes and represents to the other that it has purchased suitable Public Liability, Vehicle Liability, and Workers' Compensation insurance, or is self-insured, in amounts adequate to respond to any and all claims under federal or state actions for civil rights violations, which are not limited by Florida Statutes Section 768.28 and Chapter 440, as well as any and all claims within the limitations of Florida Statutes Section 768.28 and Chapter 440, arising out of the activities governed by this agreement.

6.02 To the extent allowed by law, each party shall be responsible for any acts, or omissions, of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party, its officers and employees, agents and contractors, harmless from all claims demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to arising out of such actions or omissions. The purchase of the insurance does not release or vitiate either party's obligations under this paragraph.

6.03 Notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the County and the FKAA in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the County be required to contain any provision for waiver.

7. GOVERNING LAW, VENUE, INTERPRETATION, COSTS, AND FEES:

7.01 This Agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State.

7.02 In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this Agreement, the County and FKAA agree that venue will lie

in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

7.03 The County and FKAA agree that, in the event of conflicting interpretations of the terms or a term of this Agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

7.04 The County and FKAA agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative, and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, courts costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this Agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the circuit court of Monroe County.

8. SEVERABILITY:

If any term, covenant, condition or provision of this Agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this Agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this Agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this Agreement would prevent the accomplishment of the original intent of this Agreement. The County and FKAA agree to reform the Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

9. BINDING EFFECT:

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the County and FKAA and their respective legal representatives, successors, and assigns.

10. AUTHORITY:

Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and Authority action, as required by law.

11. CLAIMS FOR FEDERAL OR STATE AID:

FKAA and County agree that each shall be, and is, empowered to apply for, seek, and obtain federal and state funds to further the purpose of this Agreement.

12. NON-DISCRIMINATION:

FKAA and COUNTY agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. FKAA and County agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101- 6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

13. ADJUDICATION OF DISPUTES OR DISAGREEMENTS:

13.01 County and FKAA agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law.

13.02 In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this Agreement, County and FKAA agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this Agreement or provision of the services under this Agreement. County and FKAA specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

14. COVENANT OF NO INTEREST:

County and FKAA covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this

Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

15. CODE OF ETHICS:

15.01 County and the FKAA agree that officers and employees of the County recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

15.02 FKAA warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990.

16. NO SOLICITATION/PAYMENT:

The County and FKAA each warrant that, in respect to itself, it has neither employed nor retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for it, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

17. PUBLIC ACCESS:

The County and FKAA shall each allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the County and FKAA in conjunction with this Agreement.

18. PRIVILEGES AND IMMUNITIES:

All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the County and the FKAA, when performing their respective functions under this Agreement within the territorial limits of the County and the FKAA, respectively, shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the parties.

19. LEGAL OBLIGATIONS AND RESPONSIBILITIES:

Non-Delegation of Constitutional or Statutory Duties. This Agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this Agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the County or the FKAA, except to the extent permitted by the Florida constitution, state statute, and case law.

20. NON-RELIANCE BY NON-PARTIES:

No person or entity shall be entitled to rely upon the terms, or any of them, of this Agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the County and the FKAA agree that neither the County nor the FKAA or any agent, officer, or employee of either shall have the authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this Agreement separate and apart, inferior to, or superior to the community in general. Notwithstanding the preceding language, the parties hereby designate the State of Florida as a third party with the ability to enforce against the two parties the provisions hereof, based upon the State Auditor conducting management and financial audits of all sewer programs, past, present, and future, in the Florida Keys.

21. ATTESTATIONS:

FKAA and County agrees to execute such documents as the County or the FKAA may reasonably require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

22. NO PERSONAL LIABILITY:

No covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of either party in his or her individual capacity, and no member, officer, agent or employee of either party shall be liable personally on this Agreement or be subject to any personal liability or accountability by reason of the execution of this Agreement.

23. EXECUTION IN COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

24. SECTION HEADINGS:

Section headings have been inserted in this Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Agreement and will not be used in the interpretation of any provision of this Agreement.

25. TERM OF AGREEMENT AND TERMINATION:

This Agreement shall commence on September 6, 2005, and continue for ninety-nine (99) years, or until such time as all leases entered pursuant hereto are terminated, whichever shall first occur. The parties may elect to renew this agreement at the end of its term, as set forth in the preceding sentence, for a period of ninety-nine (99) years.

26. ASSIGNMENT:

Neither party may assign this Agreement or assign any of its obligations under this Agreement without the approval of the other party, which approval shall be in writing and fully executed by both parties. All the obligations of this Agreement will extend to and bind the legal representatives, successors and assigns of FKAA and the County.

27. COMPLIANCE WITH LAWS:

This Agreement shall comply with the laws and regulations of the United States and the State of Florida, whether in effect on commencement of this Agreement or adopted after that date.

28. CONSTRUCTION:

This Agreement has been carefully reviewed by FKAA and the COUNTY. Therefore, this Agreement is not to be construed against any party on the basis of authorship.

29. NOTICES.

Notices in this Agreement, unless otherwise specified, must be sent by certified mail to the following:

| | |
|----------------------|--------------------|
| County: | FKAA: |
| County Administrator | Executive Director |
| 1100 Simonton Street | 1100 Kennedy Drive |
| Key West, FL 33040 | Key West, FL 33040 |

30. FULL UNDERSTANDING:

This Agreement is the parties' final mutual understanding with respect to any projects constructed in the future. It replaces any earlier agreements or understandings, whether written or oral, with respect to any projects constructed in the future. This Agreement cannot be modified or replaced except in a written amendment duly executed by both parties.

31. EFFECTIVE DATE:

This Agreement will take effect on the 6th day of Sept, 2005.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

BOARD OF COUNTY COMMISSIONERS OF
MONROE COUNTY, FLORIDA

(SEAL) ATTEST:
DANNY L. KOLHAGE, CLERK

By: [Signature]
Deputy Clerk

By: [Signature]
Mayor

THE FLORIDA KEYS AQUEDUCT
AUTHORITY

(SEAL) ATTEST:
By: [Signature]
Clerk

By: [Signature]
Chairman

Approved as to Form
[Signature] 9/06/05